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10/643,055	08/18/2003	Thomas K. Reusche	14809US02	3111
23446	7590	06/12/2008		
MCANDREWS HELD & MALLOY, LTD			EXAMINER	
500 WEST MADISON STREET			NGUYEN, TRINH T	
SUITE 3400				
CHICAGO, IL 60661			ART UNIT	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

The opinion in support of the decision being entered today is *not* binding precedent of the Board

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* THOMAS K. REUSCHE, DONALD B. OWEN, and  
JOE BLAHNIK

Appeal 2006-3101  
Application 10/643,055  
Technology Center 3600

Decided: September 4, 2007

*Before:* MURRIEL E. CRAWFORD, HUBERT C. LORIN and ANTON W. FETTING, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

## **DECISION ON APPEAL**

## STATEMENT OF CASE

32 Appellants appeal under 35 U.S.C. § 134 (2002) from a final rejection  
33 of claims 1 to 12, 14 to 25, and 27 to 34. We have jurisdiction under  
34 35 U.S.C. § 6(b) (2002).

1       Appellants invented a water agitation system having an agitator with  
2 at least one agitation member outwardly extending from a lateral surface of  
3 the distal end of the drive shaft (Specification 1).

4       Claim 1 under appeal reads as follows:

5       1. A water agitation system configured to be positioned within a water  
6 retention structure configured to receive and retain water, said system  
7 comprising:

8           a main body positionable within a water retention area of the water  
9 retention structure, said main body comprising a base removably  
10 interconnected to a cover, and an inner compartment defined between said  
11 base and cover; and

12           an agitator operatively connected to a motor housed within said main  
13 body, said agitator connected to a distal end of a drive shaft that extends  
14 outwardly from said main body, said agitator comprising at least one  
15 *agitation member outwardly extending from a lateral surface of said distal*  
16 *end of said drive shaft*, said motor configured to rotate said agitator in order  
17 to stir water retained within the water retention structure, wherein  
18 said at least one agitation member is operable to stir the water within the  
19 water retention structure,

20           said motor being positioned within said inner compartment. (emphasis  
21 added.)

22       The Examiner rejected claims 1 to 5, 7, 8, 10, 12, 14 to 18, 20, 21, 23,  
23 25, 27 to 30 and 33 under 35 U.S.C. § 102(b) as being anticipated by  
24 Kajisono

25       The Examiner rejected claims 6, 19 and 31 under 35 U.S.C. § 103 as  
26 being unpatentable over Kajisono in view of Official Notice.

27       The Examiner rejected claims 9, 22 and 32 under 35 U.S.C. § 103 as  
28 being unpatentable over Kajisono in view of Wright.

1       The Examiner rejected claims 11, 24 and 34 under 35 U.S.C. § 103 as  
2 being unpatentable over Kajisono in view of Earhart.

3       In Each of the rejections, the Examiner relies on Kajisono for  
4 disclosing a water agitation system including an agitation member outwardly  
5 extending from a lateral surface of a distal end of a drive shaft.

6  
7       The prior art relied upon by the Examiner in rejecting the claims on  
8 appeal are:

9	Earhart	US 3,836,130	Sep. 17, 1974
10	Wright	US 4,166,086	Aug. 28, 1979
11	Kajisono	US 5,336,399	Aug. 9, 1994
12	Bengel	US 5,465,279	Nov. 7, 1995

13       Appellants contend that Kajisono does not disclose or suggest an  
14 agitation member outwardly extending from a lateral surface of the distal  
15 end of the drive shaft.

16

## 17                   ISSUE

18       The only issue is whether Appellants have shown that the Examiner  
19 erred in finding that Kajisono discloses or suggests an agitation member  
20 outwardly extending from a lateral surface of the distal end of the drive  
21 shaft.

22

## 23                   FINDINGS OF FACT

24       Kajisono discloses an apparatus for purifying and activating water  
25 which includes a drive shaft 30 having a capsule 32 attached at a distal end  
26 thereof (Kajisono, col. 3, ll. 31 to 33). The capsule 32 has apertures 31 and

1 impellers at an end thereof to cause increased negative pressure (Kajisono,  
2 col. 4, ll. 40 to 50; Figure 7). The impellers do not extend from the drive  
3 shaft 30 but from the capsule 32. In addition, the impellers do not extend  
4 from a lateral surface but rather extend from the end of the capsule 32.

5

6 DISCUSSION

7 We will not sustain any of the rejections of the Examiner because all  
8 of the rejections rely on Kajisono for the claim limitation of an agitation  
9 member outwardly extending from the lateral surface of the distal end of the  
10 drive shaft found lacking in the Kajisono reference (see Findings of Fact).

11 The decision of the Examiner is reversed.

12 REVERSED

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